

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-1468

United States of America,

Appellee,

v.

Diem Quang Nguyen,

Appellant.

*

*

*

*

*

*

*

*

*

Appeal from the United States

District Court for the

District of Minnesota

[UNPUBLISHED]

Submitted: February 5, 2004

Filed: March 17, 2004

Before BYE, McMILLIAN, and RILEY, Circuit Judges.

PER CURIAM.

Diem Quang Nguyen appeals from the final judgment entered in the District Court¹ for the District of Minnesota upon his guilty plea to mail fraud, in violation of 18 U.S.C. §§ 1341 and 2. The district court sentenced appellant to 36 months imprisonment, 3 years supervised release, a \$10,000 fine, and restitution. Counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing for reversal that the district court erred at sentencing in imposing a

¹The Honorable James M. Rosenbaum, Chief Judge, United States District Court for the District of Minnesota.

2-level increase for obstruction of justice and in denying a 2-level decrease for acceptance of responsibility.

The district court did not clearly err in finding those calculations justified by Nguyen's misrepresentations about his financial condition to the probation officer preparing his presentence report (PSR), see U.S.S.G. § 3C1.1 comment. (n.4(h)) (obstruction adjustment applies for providing materially false information to probation officer with respect to PSR), and did not err in granting the enhancement and denying the reduction based on the same conduct, see U.S.S.G. § 3E1.1 comment. (n.4) (conduct which supports obstruction-of-justice enhancement "ordinarily indicates that the defendant has not accepted responsibility"). See United States v. Calderon-Avila, 322 F.3d 505, 507 (8th Cir. 2003) (per curiam) (clear error review of factual findings and de novo review of Guidelines construction).

Following our independent review of the record, see Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm the judgment of the district court.
